

 HAWAII HEALTH SYSTEMS CORPORATION <i>"Quality Healthcare For All"</i> POLICY	Department: Corporate Finance	Policy No.: PUR 0014A
		Supercedes Policy No.
Subject: <i>Legal Review of RFP/IFB and Contracts</i>	Approved by: <i>Brenda S. Ho</i> HHSC Board of Directors By: Brenda Ho Its: Secretary/Treasurer	Approved Date: November 17, 2022
		Last Reviewed: September 27, 2022

- I. **PURPOSE:** To streamline the process of legal review of contracts, requests for proposals ("RFP"), invitations for bid ("IFB"), and to ensure that all financial arrangements with physicians and physician groups are subject to appropriate legal review.
- II. **DEFINITION:**
- A. **"Contract"** means a written agreement that would bind HHSC to legal or financial terms, or both.
 - B. **"Agreement"** for avoidance of doubt, has the same meaning as "Contract" for purposes of HHSC procurement. Procurement documents created by the State Procurement Officer ("SPO"), the Department of General and Accounting Services ("DAGS"), and HHSC may use either "Contract" or "Agreement" or both depending on the method of procurement, the type of procurement, and department or agencies procuring goods or services.
 - C. **"HHSC"** means Hawaii Health Systems Corporation, including any one or more of its regional systems and facilities.
 - D. **"Management"** means the corporate or regional executive team member(s) or hospital administrator(s) who are authorized to execute the Contract.
 - E. **"Physician"** consistent with section 1861(r) of the Social Security Act, means an individual who is: (1) a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor and (2) licensed by and authorized to practice in the State of Hawaii.

- F. **“Healthcare Service Agreements”** means any proposed or executed agreement with a physician, physician group, advanced practice registered nurse, physician’s assistant and/or health care entity owned, in whole or in part, by one or more physicians and/or physician groups, or their immediate family member(s). The definition of Healthcare Service Agreements shall include the provision of any designated health service, as defined under 42 C.F.R § 411.351, or any potential or actual patient referrals to or from HHSC, consistent with 42 U.S.C. § 1320a-7b(b) and 42 U.S.C. § 1395nn.
- G. **“Business Associate”** means a person or entity that creates, receives maintains or transmits protected healthcare information (“PHI”) on behalf of HHSC for a function or activity regulated by 45 C.F.R Parts 160, 162, and 164. Business Associate is further defined under HHSC policy “HIPAA Business Associate Disclosure,” CMP 0031A.
- H. **“RFP”** means Request for Proposal, which is the preferred solicitation method for HHSC.
- I. **“IFB”** means Invitation for Bid, which is the preferred solicitation method for HHSC for capital improvement projects.
- J. **“Electronic Agreement”** which may be referred to as **“Clickthrough”**, **“Clickwrap”**, or **“Shrinkwrap”**, means electronically displayed terms and conditions that require click acceptance of binding terms and conditions. Such Electronic Agreements are typically encountered while using vendor electronic media to upload data, download data or generally using web based applications and cloud based applications granting access to vendor license agreement that attempts to bind HHSC to terms and conditions by clicking “I Accept.”

- III. **POLICY:** All Contracts shall be subject to legal review consistent with this policy. After legal review and approval as to the legal form, all HHSC Contracts shall be executed only by the authorized signatory(ies). HHSC shall maintain documentation for all Contracts.

This policy supersedes all former HHSC corporate PUR policies and procedures on this subject.

IV. **APPLICABILITY:**

All HHSC facilities and corporate office.

V. **REFERENCES:**

- HRS Ch. 92F;
- HRS Ch. 323F; HRS Ch. 103D and implementing Hawaii Administrative Rules (HAR). (Reference to Chapter 103D does not imply it is applicable in all cases);
- 45 C.F.R. Parts 160, 162, 164;
- 42 U.S.C. § 1395x(r);
- 42 U.S.C. §§ 1320a-7b(b) and 1395nn;
- 42 C.F.R § 411.351

VI. **RELATED PROCEDURE(S):**

PUR 0014B

VII. **ATTACHMENTS:** None.